

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY MANGANIELLO,

Plaintiff,

**MOTION FOR SUMMARY  
JUDGMENT**

-against-

07 Civ. 3644 (HB)

THE CITY OF NEW YORK, DET. LUIS AGOSTINI,  
individually and as a New York City Police Detective,  
SHAWN ABATE, individually and as a New York City  
Police Detective, DEREK PARKER, individually and as a  
New York City Police Detective, LT. HENRY SCOTT,  
individually and as a New York City Police Lieutenant,  
P.O. ALEX PEREZ, individually and as a New York City  
Police Officer, P.O. MIRIAN NIEVES, individually and as  
a New York City Police Officer, MICHAEL PHIPPS,  
individually and as the Commanding Officer of the 43<sup>rd</sup>  
Precinct, JOHN McGOVERN, individually and as a New  
York City Police Detective Sergeant, ROBERT  
MARTINEZ, individually and as a New York City Police  
Detective, GERYL McCARTHY, individually and as a  
New York City Police Deputy Inspector,

Defendants.

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**PLEASE TAKE NOTICE** that upon the annexed 56.1 Statement, dated April 17, 2008;  
the Declaration of Hillary A. Frommer, dated April 17, 1008 and the exhibits attached thereto;  
the Memorandum of Law, dated April 17, 2008; and all of the pleadings and papers heretofore  
had herein, the undersigned will move this Court, before the Honorable Harold Baer, United  
States District Judge for the Southern District of New York, 500 Pearl Street, New York, New  
York, for an Order, pursuant to the Federal Rule of Civil Procedure 56, granting the motion for  
summary judgment by defendants City of New York, retired Detective Luis Agostini, retired  
Detective Shawn Abate, retired Detective Derek Parker, retired Lieutenant Harry Scott (sued  
herein as "Lt. Henry Scott"), retired Police Officer Alex Perez, retired Police Officer Miriam

Nieves, Inspector Michael Phipps, Lieutenant John McGovern, retired Detective Richard Martinez (sued herein as "Robert Martinez"), and retired Deputy Inspector Geryl McCarthy to dismiss the complaint in its entirety with prejudice on the grounds that (1) the malicious prosecution claim against all defendants fails because plaintiff cannot satisfy his burden to establish each of the four elements against the defendants; (2) plaintiff failed to allege or establish that defendants Lieutenant McGovern, retired Lieutenant Scott, retired Inspector Phipps, and retired Deputy Inspector McCarthy had any personal involvement in plaintiff's criminal prosecution, (3) the individual defendants are entitled to qualified immunity, and (5) plaintiff cannot establish municipal liability against the City of New York.

**PLEASE TAKE FURTHER NOTICE** that plaintiff's opposition papers, if any, shall be served upon counsel for defendants on or before April 29, 2008; and

**PLEASE TAKE FURTHER NOTICE** that defendants' reply papers, if any, shall be served upon plaintiff on or before May 5, 2008.

Dated: New York, New York  
April 17, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
Attorney for Defendants  
100 Church Street, Room 3-212  
New York, New York 10007  
(212) 788-0823

By:   
Hillary A. Frommer (HF 9286)  
Senior Counsel

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York City Police Officer, MICHAEL PHIPPS, individually  
and as the Commanding Officer of the 43<sup>rd</sup> Precinct, JOHN  
McGOVERN, individually and as a New York City Police  
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Defendants.

**MOTION FOR SUMMARY JUDGMENT**

**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York  
Attorney for Defendants City, Agostini, Abate,  
Parker, Scott, Nieves, McGovern, Phipps,  
Martinez, Perez, and McCarthy  
100 Church Street  
New York, N.Y. 10007*

*Of Counsel: Hillary A. Frommer  
Tel: (212) 788-0823  
NYCLIS No. 2007-016404*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200.....*

*..... Esq.*

*Attorney for.....*